

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

JOHN GUILIANO, M.D.	:	
	:	C.A.#04-05-058
Plaintiff below/Appellant,	:	
	:	
v.	:	
	:	
KATHLEEN SPERL, REGISTERED	:	
AGENT, GOTCHA COVERED, A	:	
DIVISION OF RM BELL INDUSTRIES,	:	
INC. AND WILLIAM BELL	:	
	:	
Defendants below/Appellants.	:	

William B. Wilgus, Esquire, attorney for Plaintiff
Donald L. Gouge, Jr., Esquire, attorney for Defendants

Submitted: May 17, 2006
Decided: June 12, 2006

DECISION AFTER TRIAL

In this action the Court is called upon to determine whether the Defendants breached their contract with the Plaintiff when Defendant, William Bell, improperly installed portions of carpet and vinyl at the Plaintiff's residence. Furthermore, the Court is asked to calculate appropriate damages. The Court conducted a trial and took testimony and evidence on May 17, 2006. This is the Court's decision.

FACTS

The Court makes the following findings of fact after reviewing the testimony and exhibits submitted. The Plaintiff entered into a contract with

the Defendant, William Bell, trading as Gotcha Covered (“Defendant”), whereby the Defendant was to install carpet and vinyl flooring in the Plaintiff’s residence at 156 East Side Drive in Rehoboth, Delaware. The parties concur that they negotiated the terms of the contract throughout the summer of 2002, and committed the terms to writing on August 16, 2002. (Pl. Ex. 1.)

The contract reflects that the Defendant agreed to install 310 yards of Mohawk carpeting in the gazebo room, sitting area, great room, two bedrooms on the first floor, one bathroom and stairs. Additionally, the contract establishes that the Defendant agreed to install 648 square feet of Metro flooring throughout the kitchen, half bathroom and downstairs landing. The contract provides that the price of \$8,500 includes the installation of both new padding and new luan sub-floor.

Upon completion of the installation project in November 2002, the Plaintiff made the final payment in accordance with the terms of the contract. At that time, the Defendant notified the Plaintiff that he had made several mis-cuts in the carpeting, which he agreed to repair. Subsequently, the Plaintiff noticed additional problems with the carpeting and in August of 2003, the Plaintiff notified the Defendant via letter that he remained dissatisfied with both the carpet and vinyl installation. The parties concur

that the Plaintiff allowed the Defendant an opportunity to remedy problems with the carpeting. However, the Defendant did not repair the defects to the Plaintiff's satisfaction. At trial, the Plaintiff stated that although he was satisfied with the installation of carpeting in the bathroom and the vinyl in the downstairs landing, he remained dissatisfied with the remainder of the project.

Two certified floorcovering inspectors examined the installation project at issue and provided the Court with testimony. Mr. Jerome Selig testified that he observed several installation defects including the following: the living room seam was pulled apart, there was noticeable separation of primary and secondary backing at the seam, delamination was apparent at the living room seam, there was improper seam placement in the family room, fireplace and guest room. Additionally, he observed a mis-cut, which had been noticeably patched, by the stairs. Furthermore, Mr. Selig testified that he found no evidence of seam sealer at the seams of the carpeting when he conducted a UV light test. With respect to the vinyl flooring, Mr. Selig observed that the edges of the flooring did not meet and telegraphing was evident.

Mr. Kent Edell also inspected the installation project. He noted similar defects in the carpeting, including "open seams, mis-cuts,

delamination, and staple indentations.” (Def. Ex. 1.) Mr. Edell also attributed several of the open seams to the Defendant’s failure to properly seal the seams, and delamination. With respect to the vinyl flooring, he identified the same problems with adhesion and telegraphing.

DISCUSSION

To succeed on a breach of contract action, the Plaintiff must prove three things. First, he must show that a contract existed. Second, he must establish that the Defendant breached an obligation imposed by the contract. Finally, he must prove that he suffered damages as a result of the Defendant’s breach. *VLIW Technology, LLC v. Hewlett-Packard Company*, 840 A.2d 606, *612 (Del. 2003). There is no dispute that the parties entered into a binding contract for the installation of carpet and vinyl tile. (Pl. Ex. 1.) Thus, the remaining issues before the Court are whether the Defendant committed a breach of the contract and, if so, to what extent the Plaintiff is entitled to damages.

The Defendant Materially Breached the Contract

The Defendant testified that he originally quoted the Plaintiff a price of \$9,478; however, upon the Plaintiff’s request for a reduced rate, the Defendant stated that the Plaintiff agreed to keep the original padding and sub-flooring, bringing the total contract price to \$8,500. Despite the

Defendant's testimony, I find that the terms of the written contract are controlling. When a written contract exists, the plain language of the contract controls. *Phillips v. Home Builders v. The Travelers's Ins. Co.*, 700 A.2d 127, 129 (Del. 1997). By the Defendant's very testimony, he failed to install either new carpet padding or new luan sub-floor, which he was obliged to install pursuant to the terms of the contract. (Pl. Ex. 1.) The Defendant's failure to install the padding and sub-floor constituted a material breach of the contract.

According to each of the testifying experts, they observed noticeable defects in the vinyl flooring, which included edges that were not properly adhered and telegraphing. Mr. Selig explained to the Court that telegraphing occurs when matter remains on the sub-floor and the vinyl tile takes the shape of that underlying matter. Both Mr. Selig and Mr. Edell stated that telegraphing commonly occurs when the sub-floor is not replaced at the time that the vinyl tile is installed. Thus, the damages sustained by the Plaintiff were the direct result of the Defendant's failure to comply with the terms of the contract.

Evidence was also presented which showed that the carpet was improperly installed. The Defendant admitted that he failed to properly install the carpet when he made several mis-cuts during the installation

process. The Defendant also stated that he returned to the Plaintiff's residence to repair said problems, however, the evidence reflects that those defects were never fixed. In addition to the admitted mis-cuts, the expert witnesses consistently testified that the carpet had open seams, staple indentations and evidence of delamination. Although the experts stated that delamination is often attributed to a manufacturing defect, they agreed that delamination may also result from improper installation. In light of the numerous installation problems exhibited to the Court, I find that all of the defects, including the delamination, occurred due to the Defendant's improper installation.

For the foregoing reasons, the Court is satisfied by a preponderance of the evidence that the Defendant materially breached the contract at hand.

The Plaintiff is Entitled to Expectation Damages

Upon a finding of a breach of contract, the standard remedy awarded is based upon the reasonable expectation of the parties. *Duncan v. TheraTx, Inc.*, 775 A.2d 1019, 1022 (Del. 2001). Under Delaware law, expectation damages are measured by the amount of money that would place the non-breaching party in the same position as if the breaching party had fully performed the contract. *Id.* However, a party maintains a duty to mitigate

their damages once a material breach occurs. *Lowe v. Bennett*, 1994 WL 750375, * (Del. Super.)

The Plaintiff seeks damages in the amount of \$13,765.50, which represents the cost of removal and replacement of the carpet and vinyl flooring as estimated in September 2004. Mr. Selig testified that the current installation was so poor that total replacement was necessary. Furthermore, the Plaintiff seeks to recover an additional ten per cent of that amount for the fair value market increase that he would incur in having the work performed now. Mr. Edel stated that the defects could be repaired rather than replaced, which he estimated would cost approximately one thousand to one thousand five hundred dollars.

After reviewing all of the evidence the Court is convinced by a preponderance of the evidence that the improper installation of carpet and vinyl was so defective that it cannot be properly repaired, thus, total replacement is warranted. I also find that the Plaintiff had a duty to mitigate his damages by hiring a party to complete the reinstallation soon after he received his estimate due to the nature of the rising cost of construction and home improvement materials.

The Defendant claims that he was not trading as Gotcha Covered when he entered into the contract with the Plaintiff. The Plaintiff disagrees.

The contract itself provides the name, address and telephone number of the company, Gotcha Covered. Therefore, I find that Mr. Bell was trading under the name Gotcha Covered and judgment should be entered accordingly.

CONCLUSION

The Defendant materially breached his contract with the Plaintiff when he defectively installed carpeting and vinyl, and failed to install new carpet padding or luan sub-floor as required pursuant to the contract. Accordingly judgment is entered in favor of the Plaintiff and against the Defendant, William Bell, trading as Gotcha Covered, in the amount of \$13,765.00 together with costs and interest.

IT IS SO ORDERED this _____day of June, 2006.

Judge Rosemary Betts Beauregard